



COMMONWEALTH of VIRGINIA

Matthew J. Strickler
Secretary of Natural Resources

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David K. Paylor
Director

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Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
APPALACHIAN POWER COMPANY
FOR
Clinch River Plant
VPDES Permit No. VA0001015**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Appalachian Power Company, regarding the Clinch River Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Appalachian Power" means Appalachian Power Company, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Appalachian Power Company is a "person" within the meaning of Va. Code § 62.1-44.3.

3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "DMR" means Discharge Monitoring Report.
9. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. "Facility" means Appalachian Power Company's Clinch River Plant, located at 3464 Power Plant Road, Cleveland, Virginia.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "O&M" means operations and maintenance.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Permit" means VPDES Permit No. VA0001015, which was issued under the State Water Control Law and the Regulation to Appalachian Power Company on July 1, 2016 and which expires on June 30, 2021.
15. "Plant" or "AWWTP" means the advanced wastewater treatment plant located at 3464 Power Plant Road, Cleveland, Virginia, that treats and discharges treated effluent from Appalachian Power Company's co-located business operations (Clinch River Plant) under VPDES Permit No. VA0001015 at Outfall 003/D003.

16. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
17. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
18. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VPDES" means Virginia Pollutant Discharge Elimination System.
25. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Appalachian Power Company owns and operates the Plant. The Permit allows Appalachian Power Company to discharge treated industrial wastes from the Plant, to the Clinch River, in strict compliance with the terms and conditions of the Permit.
2. The Clinch River is located in the Tennessee–Big Sandy River Basin, Clinch River Subbasin. It is classified as Section 2; Class IV; Special Standards: x (special WQS for Copper). It is included in the *Bacteria TMDL Development for the Middle Clinch River and Tributaries in Virginia*, approved by EPA on January 17, 2014 and the State Water Control Board on June 30, 2014. The discharge from the sanitary sewer plant (Outfall 008) is included in the TMDL. The wastewater discharge from the Advanced Wastewater Treatment Plant associated with the subject outfall (003/D003) is not listed among the potential sources of the impairment. The causes of the impairment are listed as rural residential areas and unknown sources.
3. In submitting its DMRs, as required by the Permit, Appalachian Power Company has indicated that it exceeded discharge limitations contained in Part I.A of the Permit as follows: for total recoverable iron, for the reporting period July 1, 2016 through June 30, 2017, DMR received January 17, 2017; for total recoverable copper, for the months of July and October, 2017; and for chlorides, for the months of August and October, 2017, as shown in the following table:

Parameter	Observations – DMR Monitoring Period and Relevant Reported Monitoring Results								Legal Req.*
	7/1/2016 to 06/30/2017 (Annual)	07/2017	08/2017	10/2017					
361 Total Recoverable Iron CC MX MG/L (outfall 003)	1.65								1.0
203 Total Recoverable Copper CC MX UG/L (outfall D003)		44.0		60.7					30
145 Chlorides CC MX MG/L (outfall D003)			1,060	734					570

4. DEQ's SWRO issued Warning Letter No. W2017-02-S-1020 dated February 14, 2017 for the iron exceedance. Appalachian Power Company reported the exceedance by e-mail on January 10, 2017 and responded to the Warning Letter by e-mail on February 15, 2017.
5. DEQ's SWRO issued Warning Letter No. W2017-09-S-1010 dated September 12, 2017 for the July, 2017 copper exceedance. Appalachian Power Company reported the exceedance by e-mail on August 4, 2017, and on the July, 2017 DMR received August 10, 2017.

6. Appalachian Power Company reported the first chlorides violation by e-mail on August 25, 2017, then cited on the August, 2017 DMR received September 8, 2017.
7. DEQ issued NOV No. W2017-10-S-0001 dated October 18, 2017, citing the iron and first copper exceedances noted in the Warning Letters and the chlorides exceedance which occurred in August, 2017.
8. The October effluent limit violations were reported to DEQ by Appalachian Power Company by e-mails on October 19, 2017 (for chlorides) and October 27, 2017 (for copper), and then cited on the October, 2017 DMR received November 9, 2017.
9. On November 2, 2017, Department staff met with representatives of Appalachian Power Company to discuss the violations. Appalachian Power Company's written response to the NOV, dated November 22, 2017, was received by DEQ on November 27, 2017.
10. The final effluent permit limit violations occurred from Outfall 003 and D003. This is one outfall, with the "D" designation applying for discharges that occur during dewatering operations. All of the violations, with the exception of the iron exceedance, occurred when dewatering was ongoing. However, Appalachian Power Company has investigated the causes of the chloride and copper exceedances and attributes them to two separate equipment failures in the salt storage and water softening systems, and to stagnant water accumulating in the condensers and other equipment during unit lay-ups and lower volumes of untreated water being processed through the Plant due to changes in operation of the power generation units at the Facility. These issues were promptly addressed prior to the receipt of any Warning Letters from the Department.
11. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
12. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
13. The Permit, at Part I, Section A, sets forth the final effluent parameter limits. The Permit, at Part II, Section F states, "except in compliance with this permit, or another permit issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances, or otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses."
14. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
15. The Department has issued no permits or certificates to Appalachian Power Company for this discharge other than VPDES Permit No. VA0001015.

16. The Clinch River is a surface water located partially within the Commonwealth and is a “state water” under State Water Control Law.
17. Based on documentation submitted on January 10 and 17, 2017, February 15, 2017, August 4, 10 and 25, 2017, September 8, 2017, October 19 and 27, 2017, November 9 and 27, 2017, and the November 2, 2017 meeting, the Board concludes that Appalachian Power Company has violated the Permit, Va. Code § 62.1-44.5 and Regulation 9 VAC 25-31-50, by discharging industrial wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(3), above.
18. In order for Appalachian Power Company to complete its return to compliance, DEQ staff and representatives of Appalachian Power Company have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Appalachian Power Company, and Appalachian Power Company agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$3,500.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Appalachian Power Company shall include its Federal Employer Identification Number (FEIN) with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Appalachian Power Company shall be liable for attorneys’ fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Appalachian Power Company for good cause shown by Appalachian Power Company, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order, in NOV No. W2017-10-S-0001 dated October 18, 2017 and in Warning Letter Nos. W2017-09-S-1010 dated September 12, 2017 and W2017-02-S-1020 dated February 14, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. Appalachian Power Company neither admits nor denies the factual findings or conclusions of law contained herein, but solely for purposes of this proceeding and to resolve this matter without the need for a hearing, consents to the jurisdiction of the Department and the Board.
4. Appalachian Power Company consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. For purposes of this Order and subsequent actions with respect to this Order only, Appalachian Power Company declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Appalachian Power Company to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Appalachian Power Company shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Appalachian Power Company shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Appalachian Power Company shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

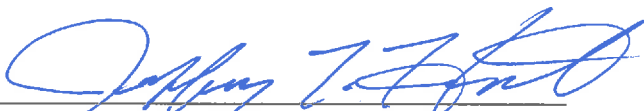
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Appalachian Power Company. Nevertheless, Appalachian Power Company agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Appalachian Power Company has completed all of the requirements of the Order;
 - b. Appalachian Power Company petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Appalachian Power Company.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Appalachian Power Company from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Appalachian Power Company and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Appalachian Power Company certifies that he or she is a responsible officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Appalachian Power Company to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible officer of Appalachian Power Company.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Appalachian Power Company voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 01 day of May, 2018.



Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

Appalachian Power Company voluntarily agrees to the issuance of this Order.

Date: 2/23/18 By: Debra Osborne, VP Generating Assets
(Person) (Title)
Appalachian Power Company

Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this 23rd day of

February, 2018, by Debra Osborne who is

VP Generating Assets of Appalachian Power Company, on behalf of the

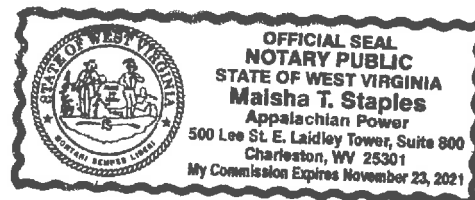
corporation.

Maisha T. Staples
Notary Public

Registration No.

My commission expires: November 23, 2021

Notary seal:



References

Va. Code [§ 55.118.6](#)

Va. Code [§§ 47.1-2, -16](#)

Notary Handbook (at [Sec. of Commonwealth](#))

APPENDIX A SCHEDULE OF COMPLIANCE

In order to comply with the provisions of the State Water Control Law and Regulation and the Permit, Appalachian Power Company agrees to implement the following actions by the dates noted below:

1. Conduct monthly chloride monitoring of Outfall 003 once per month for a period of ten (10) months, utilizing a 24-hour composite sample for each analysis. Results of each monthly chloride monitoring event shall be submitted to DEQ's SWRO by the 10th of the following month. Chloride monitoring shall commence during March, 2018, with the final monitoring event conducted during December, 2018 and December analysis results submitted no later than January 10, 2019. No later than March 10, 2019, submit to DEQ's SWRO a technical analysis of the results of the chloride monitoring, and a description of any operational changes made or proposed to address or reduce the levels of chloride in the discharge.
2. Continue the ongoing evaluation of: a) the sources of copper in the process water; b) the chemical feed system for the advanced wastewater treatment system; and c) operational procedures for "laying up" or "idling" generation units. No later than July 10, 2018, submit to DEQ's SWRO a technical analysis of the evaluation findings, and a description of any operational changes made or proposed to address or reduce the levels of copper in the discharge.
3. All reports submitted to DEQ's SWRO shall be mailed to the attention of:

Ruby Scott
Compliance Auditor
Department of Environmental Quality
Southwest Regional Office
355-A Deadmore Street
Abingdon, VA 24210